

Reasoning in the judgement as a part of the right to a fair trial

Abstract

This thesis concerns the topic of legal reasoning in the judgements of civil law. As the issue of civil judgements is very broad, the thesis is focused only at reasoning in the judgements being issued in civil disputes, only in the form of judgments and resolutions (both on merits or not). For the same reason, the thesis is limited by the fact that it focuses exclusively on the reasoning of those judgements, which are issued only by the courts of first instance and the courts of appeal.

The main focus of the thesis is therefore the legislation of reasoning in the judgement and resolution enshrined in the Code of Civil Procedure. Where appropriate, legislation *de lege lata* is compared with the possible future legislation of the civil process, which is currently presented in the draft law. Furthermore, it should be noted that the current legislation is supplemented by conclusions resulting from the case law of the Constitutional Court, the Supreme Court and the European Court for human rights. Last but not least, the whole topic of the reasoning in the judgements is set in the context of the right to a fair trial, because the right to justify the judgement is a significant part of it.

In Introduction I explain my motivation, which led me to choose the topic and also set out the objectives which I try to achieve. Furthermore I formulate basic research question when answers (not only) to these questions are sought in the following chapters. First chapter deals with the necessary historical overview of the reasoning in judgements, which maps the legislation that has been applied in the territory of today's Czech Republic over the past 100 years. This chapter is intended not only to capture individual legal regulations, but rather to find out whether it is possible to inspire even today from these historical modifications. Since the reasoning in the judgement or the right to justify the judgement is part of the right to a fair trial, second chapter is devoted to the interpretation of the right to a fair trial. The introduction to this chapter is devoted to a brief reflection on justice, especially from a legal point of view. Furthermore, the right to a fair trial, as set out in the Charter, the Convention and the Charter of Fundamental Rights of the EU, is being discussed. The focus of the thesis is the fourth and fifth chapter. These chapters are dedicated to reasoning of both the substantive and procedural decisions. The substantial space is dedicated to reasoning in judgement in both its possible forms – the oral and written. The written reasoning in the judgment constitutes the focus of thesis. A considerable amount of space is thus provided to the written reasoning in the judgment

in both its forms, which are the so-called full reasoning according to Section 157 paragraph 2, the first sentence before the semicolon and simplified reasoning according to Section 157 paragraph (3) and (4) of Code of Civil Procedure. I refer here to the main points of this legislation, but also try to highlight indefinite points, or points where the practice is often mistaken. A large amount of space is also devoted to procedural resolutions which do not necessarily contain reasoning according to legislation *de lege lata*. Application process and professional literature consider this part of the legislation to be very difficult, often perceived as constitutionally non-conforming and contradictory to Article 6 of the Convention. For these reasons, I also deal with this topic in detail. Due to the fact that (non) approval of reconciliation has certain specificities, a specific subchapter is dedicated to this type of decision. Since the judgements of the appellate courts have some specificities compared to the judgements of the courts of first instance, the reasoning in the judgement of the appellate courts are described in fifth chapter. Not a small space of thesis occupies the sixth chapter, which deals with the meaning and purpose of reasoning and its individual meanings. Due to the fact that the Civil Code has entered into force recently (1. 1. 2014) I dedicated the seventh chapter to the section 13 of the Civil Code in relation to the reasoning of the judgement, because the principle of reasonable expectation that the legal case will be decided analogously like another similar case, significantly increased the importance of reasoning. Main task of Conclusion is to answer the research questions asked and to cope with the goals defined in the introduction.